

Michigan State Senate
Committee On Reforms, Restructuring & Reinventing
**Proposal to Amend the Civil Service Provision of the Michigan
Constitution of 1963 by Expanding the Number of Unclassified Positions**

Outline of Comments by Richard D. McLellan

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My Background

- 40+ years working with state government
- State reorganization project for Lt. Gov. Milliken in 1965; Executive Organization Act of 1965
- Transition director for governor-elect in 1990
- Transition Team chair for attorney general-elect in 2010
- Chair of Michigan Law Revision Commission
- Drafted several executive reorganization orders

Comments will not cover:

- State employee union issues
- Civil Service Commission decisions
- State employee retirement or health care issues
- Make up of the Civil Service Commission or role of the Commission

Focus will solely be on: Why the Legislature should propose a constitutional amendment to authorize the Civil Service Commission to increase the number of exempt (unclassified) state employees in order to improve the administration and responsiveness of the executive branch.

In summary:

- The 1961 Constitutional Convention, which convened 50 years ago this month, made a mistake that affects the operation of the executive branch today.
- The combined effect of reducing the number of departments and then limiting the number of unclassified employees per department affect the governor's ability to manage.
- The work around undertaken by governors and the Civil Service Commission to create more political appointees undermines the integrity of the civil service system.
- The best government for Michigan is one where each branch has the ability to exercise its powers effectively and to impose the policies that reflect the outcome of the voters' decisions.

- In a large and sprawling state government like Michigan's today, being able to appoint and command the attention of key administrators and policy makers is critical.

A brief history lesson

- The Supreme Court has said:

The civil service system was established to put an end to the evils of the "spoils system" which had politicized all levels of state government; goal of this section which established the Civil Service Commission was to improve the classified civil service by the adoption of the merit system.

In construing the civil service amendment to the state Constitution, it was proper to infer that the amendment was written into the fundamental law in part at least because of popular dissatisfaction with the then existing conditions and that the citizens desired and intended to bring about a betterment in the administration of the state employment civil service.

- The 1940 civil service amendment limited the number of unclassified employees per department, but did not limit the number of departments.
- When the 1961 Constitutional Convention met, the delegates focused substantial attention to making the executive branch more effective, including the following:
 - Reducing the number of statewide elected officials, focusing more responsibility on the governor.
 - Giving the governor substantial authority to reorganize the executive branch functions, subject to a legislative two house veto.
 - Changing the advice and consent provisions.
 - Strengthening the governor's role in the budget.
 - Creating a line item veto.
 - Having the governor and Lt. governor candidates run as a team.
 - Requiring the consolidation of all "executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties" into not more than 20 "principal departments."
 - Provided that appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission.

Exercising Executive Authority and Management of the Executive Branch

The Governor, as the State's CEO, has three primary tools at his or her disposal

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- **Money**, from taxes imposed by the legislature and appropriated to state government
- Executive and agency **powers** established by the legislature in its law making capacity and assigned to the Governor and the executive branch
- **People** – officials and public servants – who carry out the policies of the legislature and the governor

It is the people function that is affected by the state civil service system:

- As intended, it eliminated the corruption and dysfunction of the spoils system.
- Overall, it provided a cadre of trained career civil servants who provided skill and continuity to the operation of government agencies.
- Without the ability to either appoint or fire top-level administrators, state governors lost some of their ability to manage state government. Some powerful civil servants would just wait out an administration and say: “we will be here after you leave.”
- The expansion of size and complexity of state government made it more difficult for a governor to direct state policy throughout the sprawling system.

Comments on the specific proposal by Sen. Roberts:

- Proposal is simple, one sentence, but complete. This can be important when proposal is submitted to the voters.
- Respects role of Civil Service Commission because, while it raises total number of unclassified positions, they are subject to approval of the Commission.
- Respects the constitutional division of the executive among a governor, secretary of state, attorney general and elected state board of education.
- “One percent” is an arbitrary number, but it is certainly enough to avoid returning to the “spoils system.”

My suggestion: adopt Sen. Roberts’ proposal and submit it to the People for a vote.

Appendix A

1908 and 1963 State Civil Service Provisions

Art. VI, §22 Constitution of 1908 State Civil Service

Sec. 22. The state civil service shall consist of all positions in the state service except those filled by popular election, **heads of departments, members of boards and commissions**, employees of courts of record, of the legislature, of the higher educational institutions recognized by the state constitution, all persons in the military and naval forces of the state, and **not to exceed 2 other exempt positions for each elected administrative officer, and each department, board and commission.**

The commission shall classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the state civil service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the state civil service who has not been certified as so qualified for such appointment or promotion by the commission. No removals from or demotions in the state civil service shall be made for partisan, racial, or religious considerations.

After August 1, 1941, no payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

Art. XI, §5 State Civil Service

§ 5 Classified state civil service; scope; exempted positions; appointment and terms of members of state civil service commission; state personnel director; duties of commission; collective bargaining for state police troopers and sergeants; appointments, promotions, demotions, or removals; increases or reductions in compensation; creating or abolishing positions; recommending compensation for unclassified service; appropriation; reports of expenditures; annual audit; payment for personal services; violation; injunctive or mandamus proceedings.

Sec. 5. The classified state civil service shall consist of all positions in the state service except those filled by popular election, **heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments**, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, **eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making.** The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

[State Police Troopers and Sergeants]

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, demotions or

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removals in the classified service shall be made for religious, racial or partisan considerations.

The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition or creation of a position shall have a right of appeal to the commission through established grievance procedures.

The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service.

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

Appendix B

Hypothetical Under 1908 and 1963 State Civil Service Provisions

1958 (Just before 1961 Con Con)

State Departments (estimated)	70
Boards and Commissions	40

Unclassified positions:

Heads of departments	70
2 exempt per department	140
2 exempt per board or commission	<u>80</u>
Hypothetical total	290

2011

State Departments	20
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Unclassified positions

Heads of departments	20
Executive office of the governor	8
2 per department	40
3 policy making per department	<u>60</u>
Hypothetical total	128

Unlimited full time or part time board and commission members are permitted under both the 1908 and 1963 Constitutions.